

San Francisco Arts Commission

Tom DeCaigny
Director of Cultural Affairs

401 Van Ness Avenue, Suite 325
San Francisco, CA 94102

SFAC Galleries
401 Van Ness Avenue, Suite 126
San Francisco, CA 94102

Street Artists Licensing
401 Van Ness Avenue, Suite 124B
San Francisco, CA 94102

tel 415-252-2100
fax 415-934-1022
sfartscommission.org
facebook.com/sfartscommission
twitter.com/SFAC



City and County of San Francisco

April 19, 2018

Ann Treboux, aka Paula Datesh
150 Sutter Street, #738
San Francisco, CA 94104

Certified Mail

Re: Website with URL: sanfranciscoartscommission.com

Dear Ms. Treboux/Datesh:

I am writing on behalf of the San Francisco Arts Commission, which is an agency of the City and County of San Francisco, to express concern over your unauthorized use of the name "San Francisco Arts Commission" for your website www.sanfranciscoartscommission.com, your use of the Arts Commission's logo on every page of your website including the home page, and your inclusion of copyrighted materials.

The URL of your website is misleading and is likely to cause individuals seeking the San Francisco Arts Commission's website at www.sfartscommission.org to go to your website instead. Once at your site, the Arts Commission's logo, made up of a red square with the stylized letters "SFAC" in white along with the words "SAN FRANCISCO ARTS COMMISSION," takes up the first full screen of the home page and every other page of the site. A viewer must scroll down from this initial view to see any information on the site. Your website conspicuously fails to state that it is not associated with the San Francisco Arts Commission and omits any identification of you or any other individuals responsible for this unauthorized site. It fails to inform any person who goes to the site that the San Francisco Arts Commission has no connection with and does not operate the site.

The unauthorized use of any of the Arts Commission's trademarks constitutes a serious infringement of the Commission's rights under federal, state and common law (see § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and §§ 17200 *et seq.* and §§ 17500 *et seq.* of the California Business & Professions Code). You are not authorized to use the San Francisco Arts Commission's name, trademarks or logos in the manner described above, or in any manner that is likely to cause confusion as to the Arts Commission's sponsorship, or relationship with you or your organization, or in any manner at all.

It is difficult to discern any purpose for the website with the URL "SanFrancisoArtsCommission.com" and its prominent positioning of the Arts Commission logo other than to intentionally mislead the public into believing that it is an official site of the San Francisco Arts Commission. The San Francisco Arts Commission has a strong interest in protecting citizens from confusing and/or misleading representations regarding its operations, and in any

representations being made under the purported authority of the Arts Commission. The Arts Commission also has a substantial and important interest in limiting the use of its logo because the Commission expended significant time and energy to produce a unique mark that holds value for the Commission. (See *S.F. Arts & Athletics v. U.S. Olympic Comm.*, 483 U.S. 522, 533 (1987).) Moreover, the unauthorized display of the logo dilutes the value of the mark as a unique signifier of a City agency. (*S.F. Arts & Athletics*, 483 U.S. at 539.)

Additionally, it appears that you have included on your website works of art created by a City employee, Anne Trickey, without authorization. Mx. Trickey has not authorized either you, or the Arts Commission, to replicate her work. Inclusion of this artwork on your website, which falsely represents that it is maintained by the Arts Commission, misleads the public. Moreover, including those images is not only a potential violation of Mx. Trickey's copyright, it is also an invasion of privacy. See e.g., 17 U.S.C. § 506.

Please also be aware that California Business and Professions Code ("Code") prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising...." Cal. Bus. & Prof. Code § 17200. To the extent that you have created this website with the intent to obtain some business benefit, you may also be in violation of Section 17537.1(g) of the Code, which specifically prohibits advertisements that create the appearance or lead persons to believe that the offer is from a government agency.

Accordingly, we ask that you take the following steps immediately:

1. Prominently clarify on each page of your website that your organization is not associated with the San Francisco Arts Commission.
2. On the "contact" portion of your website, include a physical mailing address and telephone number(s) so that individuals who visit the site will know where you are located and be able to readily distinguish your organization from the San Francisco Arts Commission.
3. Transfer your domain name "www.sanfranciscoartscommission.com" to the San Francisco Arts Commission and use an alternative domain name that does not mislead the public.
4. Remove any and all use of the Arts Commission's logo from your website.

Please write to me at:

Tom DeCaigny
Director of Cultural Affairs
San Francisco Arts Commission
401 Van Ness Ave, Ste. 325
San Francisco, CA 94102

and let me know whether you will comply with this request. I will review your response with the San Francisco City Attorney's Office to determine whether you have adequately addressed and satisfied our concerns, particularly

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with respect to your misleading and unauthorized use of the San Francisco Arts Commission's name and logo. If you fail to contact me by April 30, 2018, we will resort to legal action. We trust such action shall not be necessary.

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom DeCaigny". The signature is fluid and cursive, with the first name "Tom" and last name "DeCaigny" clearly distinguishable.

Tom DeCaigny
Director of Cultural Affairs

CC: Automattic Inc.
Internet Archive
Knock Knock WHOIS Not There, LLC
WordPress Support
Nan Besget
Rebekah Krell, Deputy Director, San Francisco Arts Commission
Margaret Baumgartner, Deputy City Attorney